IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5445 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JUSAB UMARBHAI BLOCH

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.K.T. Dave, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. S.G. Patel for the petitioner and learned A.G.P. Mr. K. T. Dave for the respondents nos.1, 2 and 3.

1. The detention order dated 16-4-1999 passed by the respondent no.2-Commissioner of Police,Rajkot against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA" , copy of which is produced at Annexure "B"inter alia indicate that two criminal cases bearing CRs. nos.8/99 and 7/99 were registered at Rajkot City Malavianagar Police Station and Rajkot Taluka Police Station respectively on 17-1-1999. That Indian made foreign liquor was seized from the possession of the petitioner in both the cases which are pending in Court.

3. That over and above the material of above stated cases, two witnesses on assurance of anonymity have supplied information against the petitioner and his bootelegging activity vide their statement dated 6-4-1999 and 8-4-1999 respectively wherein the witnesses have related the alleged incidents dated 3-1-1999 and 13-12-1998 respectively.

4. That in consideration of the above stated material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a " bootlegger" within the meaning of Section 2(b) of PASA". That resort to enforcement of general law not being sufficient to prevent the petitioner from continuing his antisocial activity, it is necessary to pass the detention order under "PASA" and hence, the impugned order is passed.

5. The petitioner has challenged the impugned order on numerous grounds. It has been submitted at the Bar on behalf of the petitioner that the impugned order is invalid on account of delayed action without any reasonable explanation.

6. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656), the Supreme Court has held that unexplained delay of five months and six days in passing the detention order from the date of registered offence which is the base for passing the order, the order is rendered invalid on account of the live link between the alleged activity and the impugned action taken having been snapped.

6.1 That this Court in the case of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381 has also expressed the aforesaid view that where the live link between the alleged antisocial activity of the petitioner and the date on which the impugned action is taken is snapped, the detention order passed on the basis of registered case is invalid..

7. In the instant case, the detaining authority has observed in the grounds of detention that the petitioner having got himself released on bail has continued his antisocial activity, and as such, the impugned order is passed. However, neither the grounds of detention or the contemporaneous record provide any explanation , much less, reasonable explanation as to delay in taking action. That the live link of antisocial activity which has surfaced and come to the knowledge of the Sponsoring Authority on 17-1-1999 though snapped, the action appears to have been taken on 16-4-1999 without any reasonable explanation either in the order or by filing any affidavit. Under the circumstances, I am constrained to hold that the impugned order requires to be struck down.

8. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

10. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 16-4-1999 passed by the Commissioner of Police, Rajkot (respondent no.2) is hereby quashed and set aside. The petitioner-detenu-Jusab Umarbhai Bloch is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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